

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 843 Dissolution of Marriage

SPONSOR(S): Andrade and others

TIED BILLS: IDEN./SIM. **BILLS:** SB 1832

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Frost	Luczynski
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Chapter 61, F.S., governs domestic relations, including actions for dissolution of marriage (DOM), child custody, child support, and alimony. Alimony is a court ordered payment from one spouse to another, most commonly awarded for support or maintenance during a pending action for DOM and after a DOM is final.

Florida currently recognizes five main types of alimony: temporary; bridge-the-gap, rehabilitative, durational, and permanent. In determining the type, amount, duration, and later modification or termination of an alimony award, the court has broad discretion but may only award alimony after initially determining that one spouse needs alimony and the other spouse is able to pay alimony. If a court awards or denies an alimony request, it must also consider enumerated factors and may also consider the adultery of either spouse or any other factor it finds necessary to achieve equity and justice between the parties. An alimony award may be modified or terminated when the circumstances or financial ability of either party changes, including changes due to a receiving spouse's supportive relationship or a paying spouse's retirement.

HB 843 makes a number of changes to ch. 61, F.S. Specifically, the bill:

- Defines alimony as any payment of support after filing for DOM, whether it is court-ordered or not.
- Places the burden of proving need and ability to pay alimony on the spouse seeking an alimony award.
- Removes the statutory presumptions regarding the length of a short, moderate, or long-term marriage.
- Eliminates permanent alimony and limits the length of a durational alimony award to 50 percent of the length of the parties' marriage.
- Prioritizes awarding bridge-the-gap alimony, followed by rehabilitative alimony, before any other form.
- Redefines the permissible amount and duration for bridge-the-gap, rehabilitative, and durational alimony.
- Requires the court to make written findings when awarding more than one type of alimony and requires such an award when awarded to a recipient spouse for rehabilitation.
- Amends, removes, and limits the factors a court must consider in alimony awards, and requires written findings of fact relative to the factors.
- Removes the court's authority to order an obligor to purchase a life insurance policy to secure an alimony award, and instead permits an obligee to purchase such a policy.
- Substantially amends the law regarding modification of alimony, support, and maintenance.
 - Removes statutory authority for the court to increase alimony.
 - Limits statutory authority for the court to reduce alimony.
- Prohibits ordering a spouse who retired prior to a DOM action to pay alimony, and generally terminates any alimony award when an obligor reaches full retirement age.
- Amends state policy regarding parental time-sharing and requires the court to begin with a presumption that equal time-sharing is in the best interest of any minor children common to the parties in a DOM.
- Permits separate adjudication of issues in a DOM action under certain circumstances.
- Retroactively applies the bill's changes to modification actions.

The bill may have a significant fiscal impact on state government, but does not appear to have a fiscal impact on local government.

The bill provides an effective date of July 1, 2020, but may permit retroactive application of the changes made to alimony modification.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 61, F.S., governs domestic relations actions including actions for dissolution of marriage (DOM), alimony, and child custody and support.

While alimony is created and guided by statute, it is also governed by case law. The leading alimony case, *Canakaris v. Canakaris*,¹ set forth many of the general concepts of alimony but confirmed that the ultimate decision in awarding alimony should be within the court's discretion, because:

In considering the appropriate criteria for the award of the different types of alimony, it is important that appellate courts avoid establishing inflexible rules that make the achievement of equity between the parties difficult, if not impossible.²

Dissolution proceedings present a trial judge with the difficult problem of apportioning assets acquired by the parties and providing necessary support. The judge possesses broad discretionary authority to do equity between the parties and has available various remedies to accomplish this purpose As considered by the trial court, these remedies are interrelated; to the extent of their eventual use, the remedies are part of one overall scheme.³

However, the Florida Supreme Court (FSC) also explained that:

[t]he discretionary power that is exercised by a trial judge is not, however, without limitation, and both appellate and trial judges should recognize the concern which arises from substantial disparities in domestic judgments resulting from basically similar factual circumstances The trial court's discretionary power is subject only to the test of reasonableness, but that test requires a determination of whether there is logic and justification for the result. The trial courts' discretionary power was never intended to be exercised in accordance with whim or caprice of the judge nor in an inconsistent manner. Judges dealing with cases essentially alike should reach the same result. Different results reached from substantially the same facts comport with neither logic nor reasonableness.⁴

In the 36 years since *Canakaris*, the legislature has provided greater statutory guidance by codifying many alimony concepts already applicable through appellate court and FSC decisions and case law has continued to narrow the exercise of judicial discretion. Despite these changes, disagreement exists regarding the court's exercise of broad discretion in determining alimony awards.⁵

Alimony Generally

Background

Alimony, also known as spousal support or spousal maintenance, is a court ordered payment from one spouse to another at any time before, during, and after a DOM. Alimony is most commonly awarded for support or maintenance during a pending action for DOM and after a DOM is final, but may also be awarded without an accompanying DOM action.⁶ A person who receives payment pursuant to an order establishing, enforcing, or modifying an alimony obligation is called an obligee,⁷ and a person

¹ *Canakaris v. Canakaris*, 382 So. 2d 1197 (Fla. 1980).

² *Id.* at 1200.

³ *Id.* at 1202.

⁴ *Id.* at 1203.

⁵ See *Bacon v. Bacon*, 819 So. 2d 950, 954 (Fla. 4th DCA 2002) (Farmer, J., concurring) (Opining that broad discretion in alimony awards is no longer justifiable and should be discarded in favor of guidelines; proposing that 35 percent of obligor's income is a reasonable range).

⁶ S. 61.09, F.S.

⁷ S. 61.046(12), F.S.

responsible for making payments pursuant to an order establishing, enforcing, or modifying an alimony obligation is called an obligor.⁸

The court may award alimony only after initially determining that one spouse actually needs alimony and the other spouse is able to pay alimony.⁹ As such, alimony may not be awarded when the requesting spouse has no actual need for support or when the other spouse has no ability to pay.

When determining an alimony award, there is a rebuttable presumption that a:

- Short-term marriage lasts less than 7 years;
- Moderate-term marriage lasts more than 7 years but less than 17 years; and
- Long-term marriage lasts 17 years or more.¹⁰

In determining the appropriate amount of alimony, the court's award may not leave an obligor with significantly less net income than the obligee, absent exceptional circumstances.¹¹ The court may order an obligor to pay alimony in periodic payments, lump sum payments, or a combination of the two.¹² The court may also require an obligor to maintain life insurance or a bond, or to otherwise secure an alimony award, to safeguard an obligee's support in the event the obligor reaches an untimely death.

Effect of Proposed Changes

HB 843 defines alimony as any payment of support from one spouse to another after a petition for DOM is filed, regardless of whether the payment is court-ordered.

- By limiting alimony to include only support payments made subsequent to a DOM action, the bill removes guidance to the court in determining alimony awards unconnected to a DOM, under s. 61.09, F.S.

The bill removes all references to maintenance in s. 61.08(2), F.S., which may leave the court without guidance as to the threshold consideration of need and ability to pay when awarding alimony or maintenance unconnected with a DOM under s. 61.09, F.S. While the bill removes references to maintenance in s. 61.08(2), F.S., references to maintenance in ss. 61.09 and 61.14(2), F.S., remain.

The bill requires a spouse seeking alimony, to prove his or her need for alimony and the obligor spouse's ability to pay alimony. If the court finds that the spouse seeking alimony has met his or her burden of proof, the bill requires the court to make a written determination regarding whether the obligee spouse has an actual need and whether the obligor spouse has the ability to pay.

- By removing the court's ability to make the initial determination of need and ability to pay and placing the burden of proving these aspects on the spouse seeking alimony, the bill may result in increased court filings, hearings, attorney's fees, and litigation surrounding the determination.
- The bill does not provide any guidelines or factors the seeking spouse must demonstrate in order to prove need and ability to pay.

The bill removes the court's authority to order an obligor to secure an alimony award by purchasing a life insurance policy or a bond, or to otherwise secure an alimony award with appropriate assets. The bill instead provides an obligee the option to purchase a life insurance policy on the obligor's life in an amount adequate to secure an alimony award.

- While the bill requires an obligor's cooperation in procuring such a policy, the bill does not contemplate whether the:
 - Cost of such a policy may be considered an obligee's expense in determining an initial alimony award; or
 - Obligee may receive an offset in his or her alimony award for the cost of such life insurance policy, particularly if such life insurance premiums increase substantially over time.

⁸ S. 61.046(13), F.S.

⁹ S. 61.08(2), F.S.

¹⁰ S. 61.08(4), F.S.

¹¹ S. 61.08(9), F.S.

¹² For lump sum alimony to be awarded, there must be a showing of need and ability to pay as well as unusual circumstances which require non-modifiable support and justification that does not substantially endanger the payor's economic status. *Rosario v. Rosario*, 945 So. 2d 629, 632 (Fla. 4th DCA 2006).

The bill eliminates the classification of marriage as one that is short-term, moderate-term, or long-term, and instead treats all marriages, regardless of length, the same for purposes of awarding alimony.

Types of Alimony

Background

Florida recognizes five main types of alimony:¹³ temporary, bridge-the-gap, rehabilitative, durational, and permanent. Each type of alimony has a defined purpose, duration, and requirements for modification or termination, as generally illustrated below.

Type	Purpose	Duration	Modification/Termination	Automatic Termination
Temporary (<i>Pendente-Lite</i>) S. 61.071, F.S.	A reasonable sum awarded after initiation of DOM proceedings for support during the pending litigation.	Only during the pending DOM litigation.	Good cause.	Final Judgment in DOM action (including appeals).
Bridge-the-Gap S. 61.08(5), F.S.	To provide assistance with legitimate, identifiable short-term needs to help with the transition from being married to being single.	May not exceed 2 years.	Not modifiable in amount or duration.	Remarriage of recipient or death of either party.
Rehabilitative S. 61.08(6)(a), F.S.	To assist in establishing the capacity for self-support through: <ul style="list-style-type: none"> • Redevelopment of previous skills or credentials; or • Education, training, or work experience to develop appropriate employment skills or credentials. 	Requires a specific, defined plan; duration varies depending on circumstances.	Substantial change in circumstances; Non-compliance with rehabilitation plan; or Completion of rehabilitation plan.	Death of either party.
Durational S. 61.08(7), F.S.	Awarded when permanent alimony is not appropriate to assist with economic assistance for a set period of time following a marriage of short or moderate duration. ¹⁴	May not exceed the duration of the marriage; duration varies.	<ul style="list-style-type: none"> • Amount: Substantial change in circumstances. • Duration: Exceptional circumstances. 	Remarriage or recipient or death of either party.
Permanent S. 61.08(8), F.S.	To provide for needs and necessities of life as established during marriage for a party lacking financial ability to meet such needs on his/her own following a: <ul style="list-style-type: none"> • Long duration marriage; • Moderate duration marriage, if appropriate considering enumerated factors;¹⁵ or • Short duration marriage, in exceptional circumstances.¹⁶ 	Perpetual (unless modified or terminated)	Substantial change in circumstances, including the existence of a recipient's supportive relationship. ¹⁷	Remarriage of recipient or death of either party.

Equitable Distribution

Except for a temporary alimony award, before awarding alimony, the court must equitably distribute the spouses' assets. When determining the distribution of the parties' marital assets, the court must begin

¹³ Alimony may also be awarded to a spouse in an action for support unrelated to a DOM action. If a spouse has the ability to contribute to the maintenance and support of his or her spouse and minor children but fails to do so, the spouse in need may apply to the court for alimony and child support without seeking a DOM. S. 61.09, F.S.

¹⁴ S. 61.08(4), F.S.

¹⁵ S. 61.08(2), F.S., lists these factors.

¹⁶ A permanent alimony award is generally inappropriate in a short-term marriage unless DOM created a genuine inequity. *Segall v. Segall*, 708 So. 2d 983 (Fla. 4th DCA 1998).

¹⁷ S. 61.14(1)(b), F.S.

with the presumption that the assets should be distributed equally between the parties, unless there is justification for an unequal distribution based on all relevant factors, including:¹⁸

- The contribution to the marriage by each spouse, including contributions to the care and education of the parties' children and either spouse's services as homemaker.
- The economic circumstances of the parties.
- The duration of the marriage.
- Any interruption of a personal career or educational opportunity by either party.
- The contribution of one spouse to the personal career or educational opportunity of the other spouse.
- The desirability of keeping any asset, such as an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party.
- The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement and liabilities associated with the parties' marital and nonmarital assets.
- The desirability of retaining the marital home as a residence for any dependent child of the marriage, or any other party, when doing so is in the best interest of the child or that party and it is financially feasible for the parties to maintain the residence until:
 - The child is emancipated; or
 - Exclusive possession is otherwise terminated by the court.
 - In making this determination, the court must first determine if it would be in the best interest of the dependent child to remain in the marital home; and, if not, whether other equities justify giving any other party exclusive use and possession of the marital home.
- The intentional dissipation, waste, depletion, or destruction of marital assets after the date the initial petition for DOM is filed or within 2 years prior to the filing of the petition.
- "Any other factors necessary" to do equity and justice between the parties.¹⁹

Effect of Proposed Changes

The bill determines the length of a marriage by calculating the period of time beginning on the date the parties' were married and ending on the date a petition for DOM is filed.

Permanent Alimony

HB 843 eliminates permanent alimony as a type of alimony the court may award.

Bridge-the-Gap Alimony

The bill requires the court to prioritize awarding bridge-the-gap alimony, followed by the rehabilitative alimony, before any other type of alimony. The bill does not change the current two year maximum length for a bridge-the-gap alimony award.

Rehabilitative Alimony

The bill provides that the length of a rehabilitative alimony award is limited to the lesser of:

- 5 years; or
- 50 percent of the duration of the marriage.
 - As such, a rehabilitative alimony award in any marriage lasting 10 years or longer could not exceed 5 years.

The bill provides that when alimony is awarded to provide greater economic assistance for an obligee to achieve rehabilitation, the court must award a combination of alimony types and make written findings regarding the:

- Basis for awarding more than one type of alimony;
- Type of alimony awarded; and

¹⁸ S. 61.075(8), F.S.

¹⁹ See Effect of Proposed Changes – Equitable Distribution, *infra*, p. 7.

- Length of time the alimony is awarded.

Durational Alimony

The bill permits a durational alimony award in any marriage, regardless of length. However, if a court awards durational alimony, the bill requires the court to:

- Make written findings that no other type of alimony or combination of other types of alimony is appropriate under the circumstances;
- Modify or terminate the award based on a:
 - Substantial change in circumstances; or
 - Finding that a supportive relationship exists or existed between the obligee and another person.

The bill provides that the length of a durational alimony award may not exceed 50 percent of the length of the marriage.

The bill limits the amount of a durational alimony award to the lesser of:

- A receiving spouse's reasonable need; or
- 25 percent of the difference between the parties' net incomes, as provided in s. 61.30, F.S.
 - S. 61.30, F.S., calculates net income by subtracting allowable deductions from gross income. Allowable deductions include:
 - Federal, state, and local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.
 - Federal insurance contributions or self-employment tax.
 - Mandatory union dues.
 - Mandatory retirement payments.
 - Health insurance payments, excluding payments for coverage of the minor child.
 - Court-ordered support for other children which is actually paid.
 - Spousal support paid pursuant to a court order from a previous marriage or the marriage before the court.

By using s. 61.30, F.S. to determine the parties' net incomes, the obligor is permitted to deduct any amount of spousal support he or she may currently pay to the other party, including temporary support or alimony, potentially resulting in a net income far lower than what his or her net income may be during the period durational alimony will be paid.

The bill provides that any support payments, whether voluntary or court-ordered, made to an obligee after a petition for DOM is filed are credited to the obligor for purposes of calculating the durational limits of an alimony award.

The bill requires the court to subtract any funds an obligee receives from social security, disability benefits, or retirement payments from the amount of alimony it awards to an obligee.

- If an obligee begins receiving any such payments after the court orders an initial alimony award, subtracting the dollar value of the obligee's new funds directly from the initial alimony award contradicts the requirements for determining a durational alimony award, which is calculated by determining 25 percent of the difference between the parties' net incomes. A dollar-for-dollar deduction results in a much larger reduction in alimony than using the 25 percent formula.

The bill removes access to any type of alimony for a spouse who proves a need for support when the obligor spouse meets the requirements for retirement, before a petition for DOM is filed.

- By prohibiting the court from ordering a retired spouse to pay alimony, the bill may:
 - Permit an older spouse to avoid supporting his or her dependent spouse by:
 - Retiring in anticipation of filing for a DOM; or
 - Purposely waiting to file for DOM until he or she has retired.
 - Leave dependent spouses with no support from the retired spouse, without consideration of the:
 - Statutory factors for determining alimony; or
 - Potential impact on state financial support, food stamps, and other state-provided services which the dependent spouse may require without access to any form of alimony.

Equitable Distribution

While the bill does not change the law regarding equitable distribution, the bill's changes to alimony law will impact how the court may utilize equitable distribution. By eliminating permanent alimony and otherwise limiting the amount and duration of the remaining forms of alimony, the court may look to equitable distribution in order to equitably and adequately provide support for a lower-earning spouse. Because the court is permitted to consider any factor necessary to do equity and justice between the parties, some courts may award the majority of assets to a lower-earning spouse to compensate for the limitations the bill places on the amount and duration of alimony.

Alternatively, the bill's changes to alimony law may result in a court determining there is no authority to keep certain assets, such as a business interest, intact during equitable distribution in exchange for an increase in the amount or duration of an alimony award, even if such an arrangement is equitable or agreed upon by the parties.

Alimony Factors

Background

After equitably distributing the parties' assets,²⁰ the court must consider the following factors, before awarding alimony:

- The standard of living established during the marriage;
 - However, the award may not be so high as to cause the obligor spouse to be unable to meet his or her own needs,²¹ and an alimony award that is over 50 percent of the obligor spouse's income is considered too high.²²
- The duration of the marriage;²³
- The age and the physical and emotional condition of each party;
- The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each;
- The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment;
- The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party;
 - Such as an agreement between the parties that one spouse would stay home with the children, or whether, as a result of the marriage, the requesting spouse's ability to earn enough to support himself or herself has been damaged in any way.²⁴
- The responsibilities each party will have regarding any minor children they have in common;

²⁰ Unless the court is awarding temporary alimony, in which case the court may determine the temporary alimony award prior to equitable distribution. S. 61.075(8), F.S.

²¹ *Rashotsky v. Rashotsky*, 782 So. 2d 542 (Fla. 3d DCA 2001).

²² *O'Conner v. O'Conner*, 782 So. 2d 502 (Fla. 2d D.C.A. 2001).

²³ See s. 61.08(4), F.S.

²⁴ *Segall*, 708 So. 2d at 983.

- The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment;
- All sources of income²⁵ available to either party, including income available to either party through investments of any asset held by that party;
 - Income may be imputed to a voluntarily unemployed or underemployed spouse, whether the spouse is an obligee or obligor.²⁶
- Any other factor necessary to do equity and justice between the parties.

Adultery

In addition to the enumerated factors, the court may also consider the adultery of either spouse and the circumstances surrounding the adultery.²⁷ However, a requesting spouse's adultery is not a complete bar from receiving alimony,²⁸ and a spouse's adulterous behavior may not be the basis for requiring him or her to pay alimony, unless such adultery contributed to a depletion of marital assets.²⁹ The spouse seeking to prove adultery has the burden of proof.³⁰

These statutory guidelines provide the framework within which the court may exercise its discretion to determine the type, amount, and duration of an alimony award, if any. There are no bright line rules which determine in each unique scenario whether awarding alimony is appropriate and if so, what kind. No single factor justifies an alimony award, rather, all factors must be considered as a whole, and the court is permitted to analyze the entire marital situation, to consider how alimony, child support, and equitable distribution are interrelated, and to exercise its discretion based on knowledge of a total financial snapshot to make an equitable decision regarding an alimony award.

Effect of Proposed Changes

The bill amends the factors the court must consider in determining the type and amount of alimony by:

- Removing the requirement that the court consider:
 - The standard of living established during the marriage.
 - Either spouse's contributions to the marriage in the form of:
 - Homemaking;
 - Child care;
 - Education; and
 - Career building of the other spouse.
 - The tax consequences specifically relating to the designation of all or a portion of an alimony payment as a nontaxable, nondeductible payment.

²⁵ Defined very broadly as "any form of payment to an individual, regardless of source, including, but not limited to: wages, salary, commissions and bonuses, compensation as an independent contractor, worker's compensation, disability benefits, annuity and retirement benefits, pensions, dividends, interest, royalties, trusts, and any other payments, made by any person, private entity, federal or state government, or any unit of local government. United States Department of Veterans Affairs disability benefits and reemployment assistance or unemployment compensation, as defined in chapter 443, are excluded from this definition of income except for purposes of establishing an amount of support." S. 61.046(8), F.S. "Support," unless otherwise specified, means: child support and, when the child support obligation is being enforced by the Department of Revenue, spousal support or alimony for the spouse or former spouse of the obligor with whom the child is living; child support only in cases not being enforced by the Department of Revenue. S. 61.046(22), F.S. Case law has expanded the definition to include in-kind payments and regular gifts and clarified that the source of income must be "available" to the party. See *Fitzgerald v. Fitzgerald*, 912 So. 2d 363 (Fla. 2d DCA 2005); *Weiser v. Weiser*, 782 So. 2d 986 (Fla. 4th DCA 2000), and *Zold v. Zold*, 880 So. 2d 779 (Fla. 5th DCA 2004). However, a party may not voluntarily make income unavailable in order to reduce his or her annual income. See *Geoghegan v. Geoghegan*, 969 So. 2d 482 (Fla. 5th DCA 2007).

²⁶ See *Keyser v. Keyser*, 204 So. 3d 159 (Fla. 1st DCA 2016); *Lostaglio v. Lostaglio*, 199 So. 3d 560 (Fla. 5th DCA 2016); *Kovar v. Kovar*, 648 So. 2d 177 (Fla. 4th DCA 2003); *Rojas v. Rojas*, 656 So. 2d 563 (Fla. 3d DCA 1995).

²⁷ S. 61.08(1), F.S.

²⁸ See *Coltea v. Coltea*, 856 So. 2d 1047 (Fla. 4th DCA 2003); *Johnson v. Johnson*, 847 So. 2d 1157 (Fla. 5th DCA 2003).

²⁹ See *Haley v. Haley*, 649 So. 2d 332 (Fla. 5th DCA 1995); *Santoro v. Santoro*, 642 So. 2d 86 (Fla. 2d DCA 1994); *Pyle v. Pyle*, 617 So. 2d 1098 (Fla. 3d DCA 1993); *Noah v. Noah*, 491 So. 2d 1124 (Fla. 1986).

³⁰ *Engbreetsen v. Engbreetsen*, 151 Fla. 372, 11 So. 2d 322 (1942).

- Limiting the requirement that the court consider:
 - The age, physical, and emotional condition of the obligee by providing that an obligee who asserts an inability to earn income imputed to him or her by the court because of his or her physical disability must qualify for benefits under the Social Security Administration Disability Insurance Program (SSADIP) or demonstrate that his or her specific disability meets the qualification standards of the SSADIP.
 - Nonmarital assets to only those which were relied upon by the couple during the marriage.
 - The sources of income available to either party through investment of any asset to only those which were:
 - Acquired during the marriage; or
 - Acquired before the marriage and relied upon during the marriage.
 - All sources of income available to either party by specifically precluding the court from imputing income to an obligor based on his or her social security retirement benefits as demonstrated by a social security retirement benefits entitlement letter.
 - Any other factor necessary for equity and justice between the parties to only factors specifically identified in the court's alimony award which must be accompanied by findings of fact justifying the court's consideration.

Adding a requirement that the court consider the needs and necessities of each party after the DOM, specifically considering a rebuttable presumption that the DOM will result in both spouses having a lower standard of living than during the marriage.

Requiring consideration of only those nonmarital assets or sources of income relied upon during the marriage may result in an alimony award that is inequitable to an obligor or an obligee, as either may have significant assets or sources of income that were not relied upon during the marriage.

Modification of Support, Maintenance, or Alimony

Background

When the court orders, or when the parties enter an agreement, requiring payments for – or payments instead of – support, maintenance, or alimony, regardless of whether the agreement or order is connected to a DOM, petition for separate maintenance,³¹ or voluntary property settlement, either party may ask the court to decrease or increase the amount of support, maintenance, or alimony based on a change in circumstances or financial ability.³² In the case of a support order, a petition for modification may be based on a beneficiary child reaching the age of majority, availability of medical insurance, or the child support guidelines schedule in s. 61.30, F.S.³³ If the court finds in favor of the party seeking modification, the court may modify support, maintenance, or alimony retroactively to the date modification was sought, as equity requires.³⁴

Alimony Modification

When the circumstances or financial ability of an obligee or an obligor change, either may petition the court to modify an alimony award, whether the award was agreed to by the parties in a marital settlement agreement³⁵ or ordered by the court.³⁶ The party seeking alimony modification must show:

- A substantial change in circumstances;³⁷
- That the change was not contemplated at the time of the final judgment of DOM; and

³¹ S. 61.09, F.S.

³² S. 61.14(1)(a), F.S.

³³ *Id.*

³⁴ S. 61.14(1)(a), F.S.

³⁵ Despite such statutory authorization, a marital settlement agreement becomes a contractual duty which, when endorsed by court order, may not be set aside or revisited, according to principles of collateral estoppel and res judicata. Florida courts do not take lightly agreements made by husband and wife concerning spousal support. A marital settlement agreement as to alimony or property rights which is entered before the dissolution of marriage is binding upon the parties. See, e.g., *Perry v. Perry*, 976 So. 2d 1151 (Fla. 4th DCA 2008) and *Griffith v. Griffith*, 860 So. 2d 1069, 1073 (Fla. 1st DCA 2003).

³⁶ S. 61.14, F.S.

³⁷ The change in circumstances alleged must have occurred after the last judgment or order awarding alimony. *Johnson v. Johnson*, 537 So. 2d 637 (Fla. 2d DCA 1998).

- That the change is sufficient, material, involuntary and permanent in nature.³⁸

Supportive Relationships

An obligor may seek modification of his or her alimony obligation if a supportive relationship has existed between the obligee and a person with whom the obligee resides. The court may reduce or terminate an alimony award based on the existence of such a relationship. The obligor has the burden of proving the obligee's supportive relationship by a preponderance of the evidence. If the court finds in favor of the obligor, the court must make specific written findings that, subsequent to the court's granting of a divorce and award of alimony, the obligee entered into a supportive relationship with a person whom he or she is unrelated to by consanguinity or affinity and with whom he or she resides. In determining whether a supportive relationship exists, the court must consider circumstances including, but not limited to:³⁹

- The extent to which the obligee and the other person have held themselves out as a married couple, including referring to each other in terms such as "my husband" or "my wife."
- The period of time that the obligee has resided with the other person in a permanent place of abode.
- The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.
- The extent to which the obligee or the other person has supported the other, in whole or in part.
- The extent to which the obligee or the other person has performed valuable services for the other.
- The extent to which the obligee or the other person has performed valuable services for the other's company or employer.
- Whether the obligee and the other person have worked together to create or enhance anything of value.
- Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.
- Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.
- Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.
- Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

Obligor's Subsequent Relationships

The financial status of an obligor's successor spouse is generally irrelevant in a modification proceeding, and it is improper for the court to consider the income of the obligor's current spouse in an action to modify the obligor's alimony obligation. However, an exception exists if the court determines that the obligor is deliberately limiting his or her income for the purpose of reducing an alimony obligation and is living off the income of a successor spouse.⁴⁰

³⁸ *Townsend v. Townsend*, 585 So. 2d 468 (Fla. 2d DCA 1991); Courts have found a substantial change in circumstance where: an obligor's health deteriorated due to two heart attacks, he was unable to continue gainful employment, and received social security disability income as his full income (*Scott v. Scott*, 109 So. 3d 804 (Fla. 5th DCA 2012)); an obligor demonstrated a substantial change in financial circumstances resulting from a detrimental impact on his business of manufacturing cathode ray television tubes due to advancing technology that made his product obsolete. The court noted that the obligor was forced to remove money from family trust accounts to meet his alimony obligation. (*Shawfrank v. Shawfrank*, 97 So. 3d 934, 937 (Fla. 1st DCA 2012)); Financial affidavits showed the obligee's income increased from \$1,710 to \$4,867 a month, making her income higher than the obligor's income of \$3,418 a month. (*Koski v. Koski*, 98 So. 3d 93, 94 (Fla. 4th DCA 2012)).

³⁹ S. 61.14, F.S.

⁴⁰ *Harmon v. Harmon*, 523 So. 2d 187 (Fla. 2d DCA 1988); *Hayden v. Hayden*, 662 So. 2d 714 (Fla. 4th DCA 1995).

While there are no statutory standards relating to modification or termination of alimony based on an obligor's retirement, the Florida Supreme Court, in *Pimm v. Pimm*, provides guidance the court must follow in exercising its discretion to grant a modification based on retirement.⁴¹ An obligor's retirement may be considered by the court among the totality of circumstances in determining if a substantial change in circumstances exists warranting a modification of alimony. The Florida Supreme Court has directed that in modification cases based on the obligor's retirement, the court should consider the:⁴²

- Obligor's age, health, and motivation for retirement;
- Type of work the obligor performs and the age at which others engaged in that line of work normally retire; and
- Obligee's needs and the impact a termination or reduction of alimony would have on him or her.
 - In assessing those needs, the court should consider any assets the receiving spouse has accumulated or received since the DOM, as well as any income generated by those assets and whether the retirement places the obligee in peril of poverty.

Effect of Proposed Changes

Alimony Modification, Generally

HB 843 removes s. 61.14(1)(a), F.S., to remove the court's general authority to modify agreements or court orders for support, maintenance, or alimony based on a change in either party's circumstances or financial ability, unless such change is specifically related to an obligee's supportive relationship or receipt of social security, disability, or retirement funds or an obligor's subsequent retirement.

- The bill creates a gap in statutory authority for the court to modify support, maintenance, or alimony orders or agreements. While the court may be able to use its inherent authority to modify its own orders to modify an alimony award, the court may no longer have any authority to modify an alimony award determined by agreement.
- The bill removes current statutory authority providing directions for pro se litigants and attorneys as to where and when a party may seek modification of an existing court order or agreement.
- The Department of Revenue (DOR) indicates concern that repealing the specific text as to modifying support⁴³ may leave some parties, attorneys, and courts without guidance on this matter, potentially resulting in increased litigation and federal compliance issues which may result in the loss of federal funding and grants.⁴⁴ However, the court would likely be able to make such modifications by exercising its inherent authority to modify its own orders and under other provisions of law relating to child support,⁴⁵ but the bill may still leave a gap in the guidance currently offered for pro se litigants.
- The bill removes the court's authority to modify support, maintenance, or alimony based on a party failing to comply with the terms of a property settlement, which may include an obligee's agreement to receive no alimony or a smaller alimony award in exchange for receiving such property from the other party.

By removing s. 61.14(1)(a), F.S., and generally restricting the court's statutory authority to modify an alimony award, with limited exceptions, the bill may remove the court's ability to increase an alimony award when either party's circumstances or financial ability changes. However, the bill continues to provide several ways for the court to reduce or terminate an alimony award.

⁴¹ *Pimm v. Pimm*, 601 So. 2d 534 (Fla. 1992).

⁴² *Id.* at 537.

⁴³ See statutory definition of support, *Supra*, at note 23.

⁴⁴ Department of Revenue, Agency Analysis of 2020 House Bill 843, pp. 2-4 (Jan. 6, 2020).

⁴⁵ See e.g. ss. 61.30(1) and 409.2564(11)–(12), F.S.

Retroactivity

The bill provides that any modification or termination of an alimony award is effective as of July 1, 2020, or retroactive to the date the petition for modification was filed.

- The bill permits an obligor to seek modification or termination of an alimony award entered prior to July 1, 2020, by applying the new law under the bill.
- This provision of the bill may make the bill entirely retroactive, permitting an obligor to seek modification or termination of any alimony award, including a permanent alimony award.

Alimony Modification, Supportive Relationships

The bill removes the court's discretion to reduce or terminate an alimony award based on an obligee's supportive relationship, and instead requires the court to reduce or terminate the award if a supportive relationship exists or existed between the obligee and another person at any time during the 180 days before the obligor filed his or her petition for modification.

- By requiring the court to modify or terminate alimony based on a supportive relationship that may no longer exist, the bill removes the court's discretion to determine what is appropriate to provide equity between the parties.

The bill provides that an obligor's subsequent remarriage or cohabitation does not constitute a basis for alimony modification, and that in a modification action, the income and assets of an obligor's subsequent spouse or person with whom the obligor resides is irrelevant.

- By removing the court's ability to consider a successor spouse's income in limited circumstances, the bill permits an obligor to rely on the income of a successor spouse and to become voluntarily unemployed or underemployed to avoid paying his or her alimony obligation.
- The bill contradicts current case law permitting such consideration in limited circumstances.⁴⁶

The bill provides that when the court orders an obligor to pay alimony and child support concurrently,⁴⁷ the alimony award may not be modified based only upon a subsequent reduction or termination of a child support obligation.

- While current law provides for such a modification only in limited circumstances to provide equity between the parties, the bill removes the court's authority to make any such modification.
 - For example: The court may find an obligee needs alimony but an obligor's ability to pay alimony may be limited at the time. As such, the court's initial alimony award may be for an amount less than that which an obligee needs. However, if an obligor is also ordered to pay child support and that support obligation terminates, the court may determine that the obligor's changed circumstances regarding his or her ability to pay alimony is an equitable reason to modify an alimony award.

The bill permits the court in any modification action to award reasonable attorney's fees and costs in accordance with s. 61.16, F.S., to a party if it determines that the other party unnecessarily or unreasonably litigated the matter, specifically including unreasonable litigation regarding the date of alimony termination.

- Current law already provides a remedy for unsupported claims under s. 57.105, F.S.

Retirement

The bill substantially changes the law regarding modification of alimony based on an obligor's retirement, in the following manner:

- An obligor's alimony obligation terminates on the earlier of when:
 - He or she reaches full retirement age as determined by the U.S. Social Security Administration; or
 - When the obligor actually retires, if such retirement occurs at an age that is reasonable for his or her profession or line of work.
- To determine if an obligor's retirement is reasonable, the court must consider the obligor's:

⁴⁶ *Harmon*, 523 So. 2d at 187.

⁴⁷ Child support payments are intended to pay for the cost of raising a child (providing clothes, food, etc.), whereas alimony is for the benefit of the receiving spouse.

- Age;
- Health;
- Motivation for retirement; and
- Type of work and the typical retirement age for that type of work.⁴⁸
- An obligor may file a petition to terminate an alimony obligation before he or she reaches full retirement age, requesting termination effective upon his or her retirement date. The court must terminate the alimony obligation after the obligor retires, unless it finds that the retirement is not reasonable.
- An obligor's social security or disability benefits or retirement payments may not be garnished for alimony enforcement.

Child Support, Parenting, and Time-Sharing

Background

Florida courts have consistently ruled that a parent's desire and right to the companionship, care, custody, and management of his or her children is an important interest that warrants deference and, absent a powerful countervailing interest, protection. Although the right to integrity of the family is among the most fundamental rights, when married parents divorce or separate, the parents' rights are subject to the overriding concern for the ultimate welfare or best interests of their children.

Time-Sharing

Section 61.13, F.S., provides guidelines to assist courts in determining matters related to parenting⁴⁹ and time-sharing⁵⁰ of minor children in actions under ch. 61, F.S., in accordance with the best interests of the child while balancing the rights of parents. As a threshold consideration, the Legislature has declared that:⁵¹

It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.

To that end, current law presumes⁵² that parental responsibility be shared by both parents, unless shared responsibility would be detrimental to the child.⁵³ However, current law does not provide a presumption in favor of a specific time-sharing schedule, thus when the parties are unable to agree, the court sets a time-sharing schedule.

⁴⁸ The bill codifies a portion of the *Pimm* decision, but omits consideration of an obligee's needs and the impact a termination or reduction of alimony would have on him or her. See *Pimm*, 601 So. 2d at 534.

⁴⁹ Parenting or parental responsibility refers to the responsibility and right to make important decisions about the child's welfare, such as education and medical care after the parents separate.

⁵⁰ Time-sharing refers to the time, including overnights and holidays, which the child spends with each parent. S. 61.046(23), F.S.

⁵¹ S. 61.13(2)(c)1., F.S.

⁵² A presumption is an assumption of fact which the law makes from the existence of another fact or group of facts found or otherwise established. S. 90.301, F.S.

⁵³ S. 61.13(2)(c)2., F.S. "Evidence that a parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28 and chapter 775, or meets the criteria of s. 39.806(1)(d), creates a rebuttable presumption of detriment to the child."

In establishing time-sharing, the court must consider the best interests of the child,⁵⁴ and the court must evaluate all factors affecting the welfare and interests of the child and the circumstances of the family, including, but not limited to the:

- Demonstrated capacity and disposition of each parent to facilitate and encourage a continuing parent-child relationship, honor the time-sharing schedule, and accommodate necessary changes.
- Anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.
- Demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child.
- Length of time the child has lived in a stable environment and the desirability of maintaining continuity.
- Geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.
- Mental health, physical health, and moral fitness of the parents.
- Home, school, and community record of the child.
- Reasonable preference of the child.
- Demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, the child's friends, teachers, and daily activities.
- Demonstrated capacity and disposition of each parent to:
 - Provide a consistent routine; and
 - Communicate with and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has ever knowingly provided false information about such matters.
- Particular parenting tasks customarily performed by each parent, including the extent to which parenting responsibilities were undertaken by third parties.
- Demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.
- Demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.
- Capacity and disposition of each parent to protect the child from the ongoing litigation regarding child custody.
- Developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

Time-sharing and Child Support

A time-sharing order entered by a court may impact the child support obligation of the parents. In a ch. 61, F.S., proceeding, the court may order either or both parents to pay child support in accordance with the child support guidelines provided in s. 61.30, F.S. These guidelines use a mathematical formula to develop the basic child support obligation of each parent. The court may not deviate from the basic child support obligation provided under the guidelines by more than five percent when establishing the child support award except in very limited circumstances, such as when a court orders substantial time-sharing.

Section 61.30(11)(b), F.S., provides that a court must adjust the basic child support obligation if the parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement agreed upon by the parties provides that a child spend a substantial amount of time with each parent.⁵⁵ The adjustment of a child support award based on substantial time-sharing, usually results in a lower child support obligation for both parents and a reduction in the child support payment.⁵⁶ Failure to regularly exercise

⁵⁴ S. 61.13(2)(c), F.S.

⁵⁵ A substantial amount of time means exercising time-sharing at least 20 percent of overnights per year. S. 61.30(11)(b)8., F.S.

⁵⁶ The court may deviate from the child support amount calculated under the required "substantial time-sharing" adjustment based upon a number of factors, including the "likelihood that either parent will actually exercise the time-sharing schedule." S. 61.30(11)(b)7., F.S.

a substantial time-sharing schedule that caused the adjustment of child support pursuant to s. 61.30(11)(b), F.S., constitutes grounds to modify the adjusted child support award, and the modification is retroactive to the date of non-compliance with the time-sharing schedule.⁵⁷

Effect of Proposed Changes

The bill deletes the state policy that there is no presumption for or against the father or mother of a child or for or against any specific time-sharing schedule when creating or modifying a parenting plan, and instead requires the court, when there is no agreement between the parties, to begin with the presumption that equal time-sharing is in the best interest of all minor children common to the parties in a DOM.

- The bill requires the court to begin with an unsupported premise that a parent must overcome in order to ensure the best interest of his or her child is met. By shifting the burden of proof to a parent and thus requiring him or her to prove a lack of involvement or unfitness of the other parent, the bill may result in increased litigation.

Bifurcation of Divorce

Background

Bifurcation is a split procedure in which the court grants a dissolution of marriage and reserves jurisdiction regarding property settlement, debts, alimony and child support. While bifurcation is permitted in limited circumstances, current case law discourages the use of bifurcation. Specifically, in *Cloughton v. Cloughton*, the FSC explained that:

[T]rial judges should avoid this split procedure. The general law and our procedural rules at both the trial and appellate levels are designed for one final judgment and one appeal. Splitting the process can cause multiple legal and procedural problems which result in delay and additional expense to the litigants. This split procedure should be used only when it is clearly necessary for the best interests of the parties or their children. The convenience of one of the parties for an early remarriage does not justify its use.⁵⁸

Effect of Proposed Changes

The bill amends s. 61.19, F.S., to permit the separate adjudication of issues in a DOM action. If more than 365 days have pass since the filing of the original petition for DOM, the bill authorizes either party to request the court to grant a final judgement dissolving the parties' marriage and reserving jurisdiction to determine all remaining substantive issues. The bill requires the court to grant such request, unless either party shows that irreparable harm will result. The bill requires, prior to granting a dissolution of the parties' marriage, the court to enter any temporary order necessary to protect the parties and the parties' children.

- By permitting a party to petition the court for bifurcation of a DOM, the bill may potentially decrease litigation in some cases by ending the parties' legal connection to each other. However, the bill may increase litigation over issues that remain unsettled after the parties' marriage is legally dissolved. A spouse seeking bifurcation in order to remarry may have less motivation to settle remaining issues between the parties, especially if he or she is in a better financial position to pay attorneys fees. Likewise, the other spouse in such a situation may become emotionally motivated to further the litigation of remaining issues.

⁵⁷ S. 61.30(11)(c), F.S.

⁵⁸ *Cloughton v. Cloughton*, 393 So. 2d 1061, 1062 (Fla. 1981).

B. SECTION DIRECTORY:

Section 1: Amends s. 61.08, F.S., relating to alimony.

Section 2: Amends s. 61.13, F.S., relating to support of children; parenting and time-sharing; powers of court.

Section 3: Amends s. 61.14, F.S., relating to enforcement and modification of support, maintenance, or alimony agreement or orders.

Section 4: Amends s. 61.19, F.S., relating to entry of judgment of dissolution of marriage, delay period.

Section 5: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

By eliminating permanent alimony, permitting retroactivity of the bill's changes to the law, and otherwise substantially limiting the court's authority to award alimony, the bill may result in a significant increase in lower-earning former spouses need for state benefits.

The bill's changes to ch. 61, F.S., will require the Florida State Court System to create new family law self-help forms.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The full fiscal impact of the bill is unknown, as the number of current alimony obligor's who may seek modification based on the new law cannot be determined.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

Generally, Social Security benefits are exempt from execution, levy, attachment, garnishment, or other legal process, or from the operation of any bankruptcy or insolvency law. However, benefits are subject to:

- The authority of the Secretary of the Treasury to make levies for the collection of delinquent Federal taxes and under certain circumstances delinquent child support payments; and
- Garnishment or similar legal process brought by an individual to enforce a child support or alimony obligation.⁵⁹

The bill conflicts with federal law by providing that an obligor's social security or disability benefits or retirement payments are exempt from garnishment for alimony enforcement.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 64-69: The order of words in this paragraph may cause confusion. As drafted, the bill requires the court to award a combination of alimony types when alimony is awarded to provide greater economic assistance for an obligee to achieve rehabilitation. The following is suggested alternative language:

The court may award a combination of forms of alimony only to provide greater economic assistance to allow the recipient to achieve rehabilitation. When awarding a combination of forms of alimony, the court shall make written findings regarding the basis for such an award, including the basis for each form of alimony awarded and the length of time for which each form is awarded.

Lines 80-82: By using the general language "the other party," it is unclear to which party the bill is referring. The first "the other party" should read "the party seeking alimony" and the second "the other party" should read "the party from whom alimony is sought."

Lines 96-97 and 115-117: Limiting the consideration of nonmarital assets to only those relied upon by the parties during the marriage may result in an alimony award that is inequitable to an obligor or an obligee.

Lines 105-106: Removing a specific reference to services rendered in homemaking, child care, education, and career building of the other party but leaving a reference to the contribution of each party to the marriage may result in the court failing to consider contributions other than those which result in a paycheck or other monetary earnings.

Lines 122-123: References a presumption that may be overcome by a preponderance of the evidence, but there is no presumption set forth in the preceding language, and it is unclear what a party may need to overcome by a preponderance of the evidence.

Lines 278-280: "All support payments made to the obligee ... are credited to the obligor"

- "Support" is defined as:⁶⁰ child support and, when the child support obligation is being enforced by the DOR, spousal support or alimony for the spouse or former spouse of the obligor with whom the child is living; or child support only in cases not being enforced by the DOR.
 - As such, the bill may have the unintended consequence of crediting child support payments to the obligor in calculating the durational limitation of an alimony award. Recommend changing "all support payments" to "any alimony payment."
- Additionally, it may be difficult for a court to interpret what "credited" to an obligor means for such payments.

⁵⁹ 42 U.S.C. § 659.

⁶⁰ S. 61.046(22), F.S.

Lines 355-383: When the court orders an initial alimony award, the court must consider any funds an obligee is receiving from social security, disability benefits, or retirement payments in determining the initial alimony amount. As drafted, the bill may permit an obligor to immediately seek modification to reduce his or her initial alimony obligation by the amount an obligee is receiving from social security, disability, or retirement, even though such amount was already considered in the court's initial award.

Lines 445-447: Stating that "[a]ny modification or termination of an alimony award is effective as of July 1, 2020, or retroactive to the date of the filing of the petition" is unclear and may be interpreted to apply the new provisions of the bill retroactively to existing alimony awards.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES